

Department of
Veterans Affairs

2011-00211-1Q-0018
Memorandum

Date: November 9, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Improper Use of Veterans Recruitment
Appointment Authority, VBA Regional Office and Insurance Center,
Philadelphia, Pennsylvania (2011-00211-IQ-0018)

To: Veterans Benefits Administration Eastern Area Director (20F1)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that applicants with veterans' preference were purposely not selected during a 2009 Veterans Service Representative (VSR) hiring effort. To assess this allegation, we interviewed Mr. Thomas M. Lastowka, Director of the Regional Office and Insurance Center (ROIC); Ms. Lucy Filipov, Assistant Director of ROIC; [REDACTED] Human Resources (HR) ROIC; [REDACTED] HR Specialist; other VBA staff; Detroit Delegated Examining Unit (DEU) staff; other VA employees; and an Office of Personnel Management (OPM) HR Specialist. We also reviewed personnel and email records, other relevant documents, and Federal laws, regulations, and VA policy. We did not substantiate other allegations, and they will not be discussed in this memorandum.

2. We concluded that the selecting and approving officials, Ms. Filipov, and [REDACTED] respectively, as well as [REDACTED] who assessed the preferred candidates for Veterans Recruitment Appointments (VRA), improperly applied the VRA hiring authority when they used it to disregard the rating and ranking scores assigned to applicants on an open general announcement certificate in order to select preferred applicants for VSR positions and when they failed to apply VRA rules equally to all VRA eligible applicants on the certificate. We suggest that you ensure that Ms. Filipov, [REDACTED] and [REDACTED] receive additional HR training to ensure that they apply VRA rules uniformly to all applicants who meet the conditions of VRA rather than identify their preferred candidates from an open general announcement, bypass or fail to consider other VRA eligible candidates, and apply those rules to only a few. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary.

Background

3. In March 2009, the DEU issued two vacancy announcements for 65 VSR trainee positions in Philadelphia. The first was an open general announcement, and the second was a Federal Career Intern Program (FCIP) announcement. The certificate of eligibles generated from the open general announcement (DEU certificate) referred 146 qualified applicants, to include 78 with veterans' preference; however, the certificate was marked as "unused" and returned to the DEU. A DEU HR Specialist told us that for

the DEU certificate, the DEU rated and ranked the applicant packages, to include applying veterans' preference, and developed a certificate of eligibles, which the DEU then sent to the ROIC. She said that the DEU did not have any records on the VRA appointments, as the ROIC handled those internally. The certificate generated from the FCIP announcement (FCIP certificate) referred 131 qualified applicants, of which 70 were selected, and of those, 4 had veterans' preference.

4. Personnel records reflected that Ms. Filipov, who at that time was the Pension Management Center Manager, was the selecting official, and [REDACTED] was the appointing official for this VSR hiring effort. [REDACTED] told us that he reviewed applications and interviewed applicants from both certificates and referred the names of his preferred candidates to HR. Emails dated April 14 and 15, 2009, reflected that the [REDACTED] asked [REDACTED] to make "job offers" to a few select applicants listed on the DEU certificate and to "please confirm application of Rule of 3." However, the DEU certificate reflected that no selections were made from it. Instead, personnel records reflected that these applicants were offered positions by utilizing the VRA hiring authority. [REDACTED] said that they "offered five VSR positions under the VRA hiring authority." The DEU certificate reflected that those applicants were rated and ranked as numbers 4, 6, 11, 16, and 17 on that list.

5. VA policy states that officials authorized to recommend or to approve the selection of a person for a position are responsible for being familiar with and following the policies and principles expressed in VA Handbook 5005, Part II, Chapter 2. VA policy also states that certain veterans may be given excepted VRA appointments under 5 CFR 307.103 to positions otherwise in the competitive service at GS-11 or below. VA Handbook 5005/12, Part II, Chapter 2, Section C, Paragraph 1 (August 12, 2005).

6. Federal regulations state that veterans' preference procedures of Part 302 apply when there are preference eligible candidates being considered for a VRA; each agency shall establish definite rules regarding the acceptance of applicants for employment in positions covered by this part; and each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules. 5 CFR §§ 307.103 and 302.301(b). It also states that each agency shall grant veterans preference by (a) numerical scores and granting 5 or 10 points to preference eligibles as required by law, or (b) without ranking and noting preference eligibles by "CP" or "XP" or "TP" as required by law. 5 CFR § 302.201. Federal regulations also state that when making an appointment from a list on which candidates have received numerical scores, the agency must make its decision for each vacancy from not more than the highest three names available for appointment and when making an appointment from a regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category. 5 CFR § 302.401.

7. The Office of Personnel Management's (OPM) *Guide for Federal Staffing, Recruiting, Examining, and Assessment Policy, VetGuide*, clarifies the above regulations by stating that if an agency has more than one VRA candidate for the same job and one (or more)

is preference eligible, the agency must apply veterans' preference procedures prescribed in 5 CFR Part 302 in making VRA appointments. It further states that a veteran who is eligible for a VRA appointment is not automatically eligible for veterans' preference and that an agency must consider all VRA candidates on file who are qualified for the position and could reasonably expect to be considered for the opportunity. Moreover, it states that an agency cannot place VRA candidates in separate groups or consider them as separate sources in order to avoid applying preference or to reach a favored candidate. (<http://www.opm.gov/staffingPortal/Vetguide.asp#VRA-Authority>)

DEU Certificate

8. The [REDACTED] told us that the DEU sent the DEU certificate to them on April [REDACTED] 2009, and that based on his personal notes, he said that it appeared that they interviewed applicants from this certificate and made offers. He said that not every offer was accepted but that they appointed applicants from this certificate. He further said that once they received the certificate, they tried to schedule interviews with the first 22 applicants but that they only interviewed 14. He said that typically two management officials conducted the interviews; they assigned a score to each applicant based on how they answered the interview questions; and they used the "rule of three" in making their selections. He initially told us that offers were made to five individuals from that certificate; however, DEU records reflected that no selections were made from it. [REDACTED] later told us that HR may have used the VRA hiring authority to make those appointments. A DEU [REDACTED] HR Specialist confirmed that the certificate was returned unused and that when she inquired as to why, an unrecalled ROIC employee told her that they filled the positions through other recruitment sources. She also said that after the DEU notified applicants that no selections were made from the DEU certificate, the DEU received complaints from several applicants.

9. Ms. Filipov told us that between external recruitment and merit promotion activities, she probably hired 800 employees. She said that in only two instances did she remember a certificate not being used. She also said that she was familiar with VA hiring policies and that she followed the guidance that [REDACTED] provided her. She said that as the selecting official, she had the ultimate responsibility for this hiring effort; however, she said that the last time she received any training in the hiring process was when she first became a supervisor in 1989. She told us that although the DEU certificate was not used to select applicants in this instance, some applicants listed on that certificate were offered jobs using the VRA hiring authority. She said that she believed that she acted responsibly and that they selected the applicants that were best qualified.

10. [REDACTED] told us that she could not explain why no one was selected from the DEU certificate, and she said that it was not the role of the HR Office in this recruitment process. She said that there was no requirement to use one source over another or any prohibition over using numerous sources to fill these positions. She said that she did

not determine which applicants were VRA eligible; however, she said that as the approving official for this hiring effort, she "probably" reviewed [REDACTED]'s assessment of the applicants. She also said that if it was not for the DEU certificate, they "would not have known" the applicants that they ultimately offered positions using the VRA hiring authority.

11. [REDACTED] told us that she was an HR staffing specialist and that [REDACTED] was her supervisor. She said that she was aware of VA hiring policies, but she said that she gained this knowledge through conferences and reviewing Federal regulations and VBA directives. [REDACTED] however, told us that she could not recall the last time she received any formalized training. She confirmed that for this hiring effort she reviewed the applicant packages for the individuals that Ms. Filipov was interested in selecting to determine if they were VRA eligible.

12. Ms. Filipov told us that when she used a DEU-generated certificate, she administered the "rule of three" as required. She said that veteran status put applicants at the top of the list, due to their higher score with the 5- or 10-point preference, and that it would be difficult to select a non-veteran over a veteran on a DEU certificate. [REDACTED]

[REDACTED] told us that the "rule of three" did not apply to the FCIP certificate. [REDACTED] told us that she did not know why the FCIP certificate was preferred for these selections but that it was ultimately Ms. Filipov's decision. She said that she thought that Ms. Filipov selected more applicants from the FCIP certificate due to the "rule of three" applying to the DEU certificate. She further said that Ms. Filipov, in the interviewing process, may have determined that the most desirable candidates on the DEU certificate were not within reach, due to the "rule of three." She said that in using the "rule of three," if the selecting official did not like the first three or six [applicants], "they're stuck." Federal regulations state that an appointing officer shall select an eligible for the first vacancy from the highest three eligibles on the certificate who are available for appointment and the second and each succeeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment. 5 CFR § 332.404.

Veterans Recruitment Appointment

13. Mr. Lastowka told us that the VRA recruitment option allowed eligible veterans to be selected for direct appointments without competition. He said that they were therefore able to hire the applicants that they wanted as opposed to those they did not. [REDACTED] told us that they selected preferred applicants from the DEU certificate and then offered them positions under VRA. She said that they made five job offers using the VRA hiring authority; however, she said that two of the applicants declined the job offer. [REDACTED] told us that she believed that Ms. Filipov wanted to select applicants from the DEU certificate; however, she said that those particular applicants were not within reach, based on the "rule of three." She said that since those applicants were veterans and eligible for non-competitive appointments through the use of the VRA, Ms. Filipov chose to go that route.

14. [REDACTED] told us that Ms. Filipov considered candidates from multiple recruitment sources and that the DEU certificate was one source. She said that it yielded many qualified candidates; the top 22 were considered; and Ms. Filipov determined that from among those, there were 5 that "they were interested in offering employment." She also said that they then offered employment to the 5 candidates via VRA appointments and that those candidates were listed on the DEU certificate as either "CP or CPS veterans." The DEU certificate reflected that it contained the names of 38 applicants rated CP (disability rating of at least 10 but less than 30 percent) or CPS (disability rating of 30 percent or more) and that the certificate reflected a numerical rating and ranking score for each. As noted above, the 5 candidates offered VRA appointments were rated as numbers 4, 6, 11, 16, and 17 on the DEU certificate.

[REDACTED] told us that they could have offered positions to any of the veteran applicants using VRA, provided they met the eligibility requirements. She said that they did not review all the applicant packages on the DEU certificate to identify all applicants who met VRA requirements, because she said that there was no requirement to do so. She told us that the applicants appointed under VRA were otherwise "desirable candidates" to Ms. Filipov and would not have been available for appointment using the DEU certificate.

15. A VA HR Consultant told us that for this VSR hiring effort, the ROIC HR Office should have reviewed and applied veterans' preference to all of the VRA eligible candidates listed on the DEU certificate and not just those that they were interested in offering employment. She said that [REDACTED] had a duty to "put them collectively in a barrel and list them based on their veterans' preference." She further said that this list, or at least the entire list of CP eligible candidates, should have been referred to the selecting official for consideration. Further, the OPM HR Specialist who is responsible for OPM's *VetGuide* told us that VRA appointments are done by virtue of part 302 in the Code of Federal Regulations; veterans' preference procedures apply as provided in 5 CFR 302.201; and that OPM's *VetGuide* was updated most recently in 2009.

Conclusion

16. We concluded that the selecting and approving officials, Ms. Filipov, and [REDACTED] respectively, as well as [REDACTED] who assessed the preferred candidates for VRA, improperly applied the VRA hiring authority when they used it to disregard the rating and ranking scores assigned to applicants on a DEU certificate in order to select preferred applicants for VSR positions. Ms. Filipov said they considered only the top 22 applicants, and [REDACTED] said that they interviewed 14. However, there were 38 10-point eligible veterans ranked on the DEU certificate, and it was only after they identified their preferred candidates, who were not within reach because of the "rule of three," that only those few were assessed to determine if they were eligible for and could be appointed by VRA. [REDACTED] told us that had it not been for the DEU certificate, they would not have known these applicants. They also failed to apply VRA rules uniformly when they did not assess at least all 10-point veteran eligible applicants to determine who met the conditions of the rules and equally consider those applicants. We suggest that you ensure that Ms. Filipov, [REDACTED]

and [REDACTED] receive additional HR training to ensure that they apply VRA rules uniformly to all applicants who meet the conditions of VRA rather than identify their preferred candidates from an open general announcement, bypass or fail to consider other VRA eligible candidates, and apply those rules to only a select few. We are providing this memorandum for your information and official use and whatever action you deem appropriate.

17. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with the individuals named, within the bounds of the Privacy Act; however, copies may not be released to them. Please be advised that OIG maintains this memorandum in a Privacy Act system of records and you must ensure that it is appropriately safeguarded. If you have any questions, please call [REDACTED]

[REDACTED]

[REDACTED]